

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Administration of the North American Numbering Plan	)	CC Docket No. 99-200
	)	
Bandwidth.com, Inc. Petition for Limited Waiver of	)	
Section 52.15(g)(2)(i) of the Commission's Rules	)	
Regarding Access to Numbering Resources	)	

**COMMENTS OF BANDWIDTH.COM, INC. REGARDING**  
**BANDWIDTH.COM, INC. PETITION FOR LIMITED WAIVER**

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**I. INTRODUCTION**

Including the Bandwidth.com, Inc. ("Bandwidth") Petition for Waiver, there are fifteen separate pending Petitions for Waivers of rule 52.15(g)(2)(i),<sup>1</sup> and many more

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<sup>1</sup> See, RNK, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed February 7, 2005; Nuvio Corporation Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed February 15, 2005; UniPoint Enhanced Services d/b/a PointOne Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed March 2, 2005; Dialpad Communications, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources, filed March 1, 2005; Vonage Holdings Corporation Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources, filed March 4, 2005; VoEX, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources, filed March 4, 2005; Qwest Communications Corporation Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed March 28, 2005; CoreComm-Voyager, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed April 22, 2005; Net2Phone Petition for Limited

almost certainly wait in the wings pending the outcome of the current petitions. As Bandwidth's petition itself sets forth, waivers of Section 52.15(g)(2)(i) do not represent the proper procedural method to address an incredibly complex and intricately interwoven series of issues. Contrary to the representations of some petitioners, North American Numbering Plan ("NANP") telephone numbers are an integral component to the entire telecommunications infrastructure. Instead of addressing that component in a waiver context, the industry will be vastly better served by following the proper and well established procedures designed to fully contemplate the import of telephone numbers and the impact a change of this magnitude would have to the entire telecommunications industry.

Bandwidth was compelled to file this petition both in attempt to prevent an unnecessary calamity and to avoid being placed in an unfair and competitively disadvantageous position. Because of the threat of an overnight shift to the fundamental operational expectations of the industry, Bandwidth and other recent petitioners also seek comparable favorable treatment in as even-handed and non-discriminatory fashion as possible in light of the ad hoc nature of the entire proceeding. For example, granting Vonage the relief it seeks without according Bandwidth the opportunity to compete on

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Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed May 6, 2005; WilTel Communications, LLC Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed May 9, 2005; Constant Touch Communications Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed May 23, 2005; Frontier Communications of America, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed August 29, 2006; Millicorp, LLC Petition of Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed March 14, 2012; SmartEdgeNet, LLC Petition of Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed March 6, 2012; Bandwidth.com, Inc. Petition of Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources, filed June 13, 2012 ("Petitions for Waivers").

similar terms would be arbitrary and capricious and violate both Commission practice and the Administrative Procedure Act.<sup>2</sup>

In contrast to pure VoIP providers petitioners who seek special treatment, Bandwidth has invested significant financial resources to deploy interconnection facilities, both in its capacity as a state-certificated carrier and as an IP-based information services provider, in accordance with and in reliance upon well-established Commission precedents.<sup>3</sup> If the Commission wishes to change the framework under which Bandwidth and others built and operate their telecommunications carrier businesses, the Commission can do so. However, operational integrity, fundamental fairness, and compliance with the law dictates that the Commission adopt final numbering rules either through the North American Numbering Council or in the *IP- Enabled Services* proceedings to avoid uneven and discriminatory regulation.<sup>4</sup> In fact, key and diverse facets of the industry all agree that Petitions for Waivers are no way to address the wide array of critical issues that would be created by allowing non-carriers to have access to NANP numbering resources directly.<sup>5</sup>

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<sup>2</sup> 5 U.S.C. §706(2)(A)

<sup>3</sup> See e.g. *In the Matter of Telephone Number Requirements for IP-Enabled Service Providers*, WC Docket No. 07-243, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking (rel. Nov. 8, 2007). ¶ 20 (“*VoIP Number Portability Order*”).

<sup>4</sup> See: *In the Matter of Administration of the North American Numbering Plan, Millicorp and SmartEdgeNet, LLC Petitions for Limited Waivers of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Access to Numbering Resources*, Comments of Bandwidth.com, Inc., Level 3 Communications, LLC, and COMPTTEL, CC Docket No. 99-200, pp. 5-7 (Filed May 8, 2012)(“CLEC Coalition Millicorp and SEN Comments”).

<sup>5</sup> See: Letter from Jennifer K. McKee, Vice President and Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-200, p. 2 (filed July 19, 2012)(“*NCTA Ex Parte*”); Letter from James Bradford Ramsey, General Counsel, NARUC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-200, (filed July 19, 2012) (including NARUC Resolution)(“*NARUC Ex Parte*”); Letter from Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-200, p. 2 (filed July 19, 2012)(“*NTCA Ex Parte*”).

Ad hoc waivers of rule 52.15(g)(2)(i) would be both a violation of administrative fairness and destructive of the framework established by federal and state policy makers to achieve a myriad of policy goals, and place Bandwidth in a competitively disadvantageous position. As Bandwidth and others have noted previously, granting authority to non-carrier entities to obtain direct access to numbering resources also will trigger an industry-wide regulatory race to the bottom. Nevertheless, if the Commission instead proceeds through a waiver process, Bandwidth also requests a waiver of Section 52.15(g)(2)(i) in a manner comparable to any other waivers granted until such final rules are adopted.

## **II. DISCUSSION**

### **A. Commission Policy Should Support IP Innovation But Not At the Expense of Fundamental Fairness**

As the Commission emphasized multiple times in its *USF/ICC Reform Order*; “With respect to the ultimate ICC framework *and the intervening transition*, however, we find that a uniform national approach will best create predictability for carriers and promote efficient pricing and new investment to the benefit of consumers.”<sup>6</sup> For the Commission to even entertain Petitions for Waivers after only months ago setting the entire industry on a transition schedule that stretches to 2020 and then taking comments to pages and pages of complex inquiries in an *FNPRM* directly on point to this proceeding is incredulous. Addressing these issues through waivers would create

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<sup>6</sup> *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform - Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 796 (rel. Nov. 18, 2011) (*FNPRM* or *USF/ICC Reform Order*)(*emphasis added*).

dramatic and fundamental changes to long-standing industry norms overnight without having afforded all affected parties the due process and business planning benefits inherent to a normal rule-making process. Dramatic change of this magnitude would trigger an industry-wide race to the bottom as providers of all sorts look to strip costs from their business and avoid rules that represent the traditional public interest goals of federal and state regulators.

Telephone numbers are necessary for Bandwidth's VoIP services as well as its customers' VoIP services which utilize broadband IP networks to receive calls from parties served by a carrier operating a time division multiplexed ("TDM") network within the PSTN. From the outset Bandwidth has understood this necessity and has partnered with telecommunications carriers, including its certificated telecommunications carrier affiliate Bandwidth CLEC, to effectuate this capability. According to its arrangement with its CLEC affiliate and other CLECs, carriers exchange Bandwidth's customer's communications on the PSTN. Carrier call routing necessary to support Bandwidth's VoIP service offering also includes utilization of IP-enabled networks.

Under existing rules, a VoIP provider that is not either a telecommunications carrier or partnered in some manner with a telecommunications carrier cannot directly acquire telephone numbers from NANPA or the pooling administrator ("PA"). Specifically, Section 52.15(g)(2)(i) requires that an applicant requesting North American Numbering Plan resources must be "authorized to provide service in the area for which the numbering resources are being requested." The Commission has interpreted this rule to require "carriers [to] provide, as part of their applications for initial numbering resources, evidence (*e.g.*, state commission order or state certificate to operate as a

carrier) demonstrating that they are licensed and/or certified to provide service in the area in which they seek numbering resource[s].”<sup>7</sup> In other words, an applicant must be a state-certificated common carrier to obtain numbering resources directly from NANPA and/or the PA. This represents a carefully crafted, successful framework in which federal and state policy-makers have balanced incentives and obligations to ensure the necessary investment in infrastructure and innovation. In accordance with these rules, and as evidence of the framework’s logic, Bandwidth has invested considerable resources to become and operate a certificated telecommunications carrier over the last several years. Simultaneously, Bandwidth has been a leading innovator in IP services and with respect to the exchange of IP traffic.<sup>8</sup>

While the Commission has found that offering interconnected VoIP services does not require state certification because it is inherently an interstate service,<sup>9</sup> it has since reaffirmed the requirement that only a carrier can participate directly in the access and management of NANPA resources.<sup>10</sup> Because Bandwidth CLEC is a state-certificated common carrier, it can obtain numbering resources directly from NANPA and/or the PA without a waiver of Section 52.15(g)(2)(i) of the Commission’s rules. However, if the Commission deems it necessary to upset this current regime by granting direct access to scarce public resources to non-certificated - and lightly regulated - providers, then Bandwidth’s waiver request also must be granted. Without such a waiver, Bandwidth and all other providers that work to play by the rules will suffer an improper injury by virtue

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<sup>7</sup> *Numbering Recourse Optimization*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, 15 FCC Rcd 7574, ¶ 97 (2000).

<sup>8</sup> See <http://bandwidth.com/about/read/verizonAgreement.html>

<sup>9</sup> *In the Matter of Vonage Holdings Corporation*, 19 FCC Rcd 22404, ¶¶ 14-22 (2004).

<sup>10</sup> *VoIP Number Portability Order*, ¶ 12.



of the Commission rules and followed by a sudden and inexplicable abandonment of the rules governing such a critical part of the industry. This whipsaw effect would also create an unbalanced environment in which a small subset of competitors have all the benefits of being able to offer the service of a carrier without any of the burdens imposed on a regulated carrier.

New IP interconnection architectures will allow carriers to use IP technologies, including soft-switches and media gateways more efficiently to overcome limitations inherent to the interconnection architectures of the PSTN. However, the commission just determined in the *FNPRM* that the move to an all IP environment is so dramatic that proceeding into this next phase in the industry required a thorough review and a well defined transition and NANP telephone numbers are at the very center of the issues set out in the IP-enabled *FNPRM*. Nevertheless, if the Commission insists upon unleashing the confusion and litigation that inevitably follow from allow telephone numbers to be assigned to a select few non-carriers while the rest of the industry debates the law and rules, Bandwidth also requests a limited waiver of Section 52.15(g)(2)(i) to obtain numbering resources directly from NANPA and/or the PA as a non-carrier too.

While Bandwidth did not choose to pursue a business model in which it is not subject to state regulation, Bandwidth cannot compete effectively if the Commission provides its competitors all the regulatory rights but none of the obligations of regulated carriers. Should the Commission begin granting Petitions for Waivers now, many others are likely to follow suit in hopes of lightening their regulatory load as well. As a practical matter, however, the Commission cannot have it both ways. If it wishes to upset the current balance by granting ad hoc relief to one party, the Commission must accept

the certainty that the Commission will have to grant similar relief to all others. The Commission consequently will have inadvertently created an entirely new set of incentives for a wide range of communications businesses virtually overnight.

**B. Pending Waiver Petitions Have Failed to Demonstrate “Good Cause” to Grant Requests for a Limited Waivers.**

Pursuant to Section 1.3 of the Commission’s rules, the Commission may waive a rule when “good cause” is demonstrated.<sup>11</sup> The Commission may exercise its discretion to waive a rule when the particular facts make strict compliance inconsistent with the public interest.<sup>12</sup> In addition, the Commission may take into account considerations of hardship, equity, or the more effective implementation of overall policy on an individual basis.<sup>13</sup> Thus, waiver of the Commission’s rules is appropriate when special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest.<sup>14</sup>

Pending Petitions for Waivers have fundamentally failed to demonstrate any identifiable hardship or special circumstance that would justify such a dramatic deviation from established procedures that currently serve the public interest.<sup>15</sup> Nevertheless, should the Commission insist upon finding a backdoor to grant certain providers special privileges, Bandwidth’s waiver request must also qualify as a special circumstance. To forgo established procedures for rulemakings that impact an entire communications industry in such a manner, it would become immediately necessary to grant the same

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<sup>11</sup> 47 C.F.R. § 1.3; *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (“*WAIT Radio*”).

<sup>12</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

<sup>13</sup> *Id.*; *WAIT Radio*, 418 F.2d at 1159.

<sup>14</sup> *Id.*

<sup>15</sup> *See*, CLEC Coalition Millicorp and SEN Comments, pp.3-4.

special treatment to all others that request it to avoid unfair discrimination. If the Commission abandons NPRM procedures in favor of ad hoc methods, Bandwidth too would be able to choose how to be regulated as it works to deploy IP networks and VoIP services without subjecting itself to state common carrier regulation. Accordingly, “good cause” exists to grant Bandwidth’s waiver request if the Commission grants other pending Petitions for Waivers beyond that granted to SBC-IS.

**C. The Rules Governing Waiver Requests Were Not Intended to Be Used to Grant Special Favors, Implement Test Cases, or Predetermine the Outcomes of Rulemaking Proceedings.**

The industry has operated with a basic understanding of how telecommunications carriers and information service providers are to be differentiated and positioned for regulatory purposes for almost three decades.<sup>16</sup> In accordance with established rules Bandwidth invested considerable resources to become and operate a certificated telecommunications carrier over the last several years. Non-carrier providers who are now pressing for rule waivers, should have done the very same rather than looking for unjustified advantages premised on the false claim “that the [state certification] requirement prohibits companies like SEN from gaining access to number resources because SEN provides IP-enabled services, which are ineligible for state certification.”<sup>17</sup> Contrary to the statements of VoIP providers such as SEN and Vonage in this proceeding, being a certificated telecommunications carrier remains absolutely critical to the smooth operation of an entire industry and any carrier that follows the rules is eligible to participate. Further, the Commission only recently issued the *USF/ICC Reform Order*

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<sup>16</sup> *In re: MTS and WATS Market Structure*, Memorandum Opinion and Order, 97 FCC 2d 682 (1983).

<sup>17</sup> Letter from Mr. Randy Lowe on Behalf of SmartEdgeNetwork, LLC (“SEN”), to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-200, p. 1 (filed Aug. 16, 2012).

and *FNPRM* which collectively speak to the fundamental issues at hand in the Petitions for Waivers already.

Nevertheless, the Commission seems intent upon entertaining proposal that would affect the entire industry dynamic without regard to normal review procedures, or providing concrete guidance to impacted third parties. To be frank, this way of thinking seems strikingly similar to the Commission's waiver of the rules that had long governed the MSS band license for LightSquared, where far-reaching and critical problems were initially ignored but which would likely have been identified in an NPRM process.<sup>18</sup> The subsequent fall-out and wasted resources expended suggest the criticism of the Commission's process in that proceeding was well placed.<sup>19</sup> The Commission should not repeat the problematic procedural approach of changing fundamental industry-wide technological expectations associated with long-established rules through individual waivers. There is widespread consensus from key industry constituents such as COMPTTEL, NCTA, and NTCA, as well as the state regulators within NARUC, that an NPRM is a requisite procedural step to follow at a bare minimum.<sup>20</sup>

A single Petition for Waiver that is approved at this point in time will for all practical purposes pre-determine the outcome of the Commission's *FNPRM* or any other NPRM the Commission might release on the questions raised by the Petitions for Waivers. If the Commission begins granting new or long-standing Petitions for Waivers,

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<sup>18</sup> *In the Matter of Lightsquared Subsidiary LLC Request for Modification of its Authority for an Ancillary Terrestrial Component; In re Application of Lightsquared Subsidiary LLC Request for Modification of its Authority for an Ancillary Terrestrial Component*, IB Docket No. 11-109; File No. SAT\_MOD-20101118-00239 (Order and Authorization by Chief International Bureau) (rel. Jan. 26, 2011).

<sup>19</sup> See e.g., *Id.*, Comments of AT&T, Comments of Trimble Navigation Limited, (Filed Aug. 1, 2011).

<sup>20</sup> See e.g.: *NCTA Ex Parte*, *NTCA Ex Parte*, and *NARUC Ex Parte*.

the Commission must also grant Bandwidth's waiver request on an expedited basis. While fundamentally opposed to proceeding on matters of such significance as this through non-standardized ad hoc methods, Bandwidth seeks a waiver of Section 52.15(g)(2)(i) to ensure it is able to deploy IP-enabled service offerings on equal competitive footing.

### **III. CONCLUSION**

For the reasons described above, to avoid upending critical intercarrier operational processes and procedures and prevent improper discrimination and anticompetitive consequences the Commission must deny the pending Petitions for Waivers. However, should the Commission approve waiver requests in any manner in the future, it must also grant the equivalent approval to Bandwidth pursuant to its Petition for Waiver as well.

Respectfully submitted,

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/S/\_\_\_\_\_

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